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SUPERVISOR

Ms Gisela KALLENBACH
MEP
European Parliament
BRU - ASP 08H259

Brussels, 31 October 2007
PH/HH/ab D(2007)1685 C **2007-0650**

Subject: amendment of Council Directive 91/477/EEC on the control of the acquisition and possession of weapons

Dear Ms Kallenbach,

Recently, I have taken note of the developments in the legislative procedure on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on the control of the acquisition and possession of weapons.

These developments raise an important issue of data protection, mainly as a consequence of Amendment 28 included in your report, as approved by the Internal Market Committee (IMCO) of the European Parliament. This amendment introduces the maintenance of a computerised and centralised data filing system in each Member State, in which several data will be stored for not less than 20 years. These data include personal data as meant in Directive 95/46/EC, such as the name and address of the manufacturer and the former and current owner of the firearm.

As I understand, this amendment and other elements of the directive are being discussed in a series of "trilogue meetings" between the Presidency, the Parliament and the Commission, in which a compromise might soon be reached.

Given my responsibility under Article 41 of Regulation 45/2001 for advising Community institutions and bodies on all matters concerning the processing of personal data, I consider it my task to inform you about my concerns on the substance of this amendment.

Of course, I fully understand the need for an adequate registration system of firearms and the persons connected to those arms. As Recital 1 of the Commission Proposal states, there is a need to control the freedom of movement of firearms, using security guarantees suited to this type of product. There is no doubt that security guarantees which include the collection, storage and exchange of data on persons connected to these arms will be suitable. I also have no doubt that the concept of traceability of firearms (and identification of these firearms) which seems to give the justification for the registration is a useful concept, in order to promote security.

The processing activities are subject to compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the

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processing of personal data and on the free movement of such data, as is recognised by a proposed new Recital 9D.

However, this recognition of the need for data protection in a recital is not sufficient. When a law requires a specific processing of personal data, it should fulfil basic principles of data protection, such as purpose limitation, data minimisation, limitation of access to the data and more in general the principle of proportionality. It should be precise. For these reasons, Article 6 of Directive 95/46/EC does not only require that personal data are processed lawfully but also that other principles of data quality are fulfilled.

Unfortunately, the amendment does not reflect these principles. It is for this reason that I recommend reconsidering the amendment, in order to ensure that data protection safeguards will be included in the text of the directive.

A reconsideration of the amendment could also be useful in view of the effectiveness of the registrations, in order to achieve that the Directive not only obliges the Member States to maintain a registration but that it also harmonises some essential elements of its functioning. Such harmonisation would facilitate the exchange of information between the competent authorities in the Member States. It could prevent information being accessible by others than authorities and could guarantee the accuracy of the information.

Let me now give some examples of specific concerns:

- According to the amendment, the main purpose of the processing is the traceability of firearms. The proposal however does not specify this purpose. For what reason must a firearm be traceable, to whom must it be traceable and for how many years?
- The data will have to be retained for 20 years. I understand the need for a relatively long retention period, but there is no justification given as to why 20 years is an appropriate period. The need for such a long period of retention seems in any event quite unclear, as far as personal data on former owners of weapons are concerned.
- There is no obligation for the national authority to regularly update the register.
- There is no provision limiting the access to these data to a limited category of competent authorities.
- There are no specific provisions ensuring that the data subject can fully exercise his rights under Directive 95/46.

In my view, it would be possible to address these concerns by adding essential guarantees of data protection to the text without significantly delaying the legislative procedure. It goes without saying that my staff and I are available to support Council, Parliament and Commission, if requested, in order to give technical assistance.

I have sent a similar letter to Mr Mendonça e Moura, Permanent Representative of Portugal and Mr Zourek Director-General, DG Enterprise, European Commission.

Yours sincerely,

Peter HUSTINX

cc: Mr Alexander Alvaro, MEP.